

1. Chemical Control Ordinance

Model Construction Chemical Management

The purpose of this ordinance is to require construction sites of a specified size to evaluate, plan and implement chemical control procedures in the form of an approved Chemical Spill Prevention and Management Plan. The ordinance specifies management goals to be met by construction in order to develop a site-specific plan to prevent spills, as well as manage any spills that do occur. When plans are not developed or not followed the ordinance gives the Parish the authority to stop "unplanned" activities, assess penalties and/or take corrective action and recover cost.

Construction Site Chemical Control Ordinance

ORDINANCE NO. _____

SECTION 1. PURPOSE/INTENT.

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of (_____) through the regulation of construction site chemical use and management. This ordinance establishes methods for controlling the introduction of construction site chemicals into the water systems and bodies within this Parish. The objectives of this ordinance are:

- 1) To regulate the use of chemicals at construction sites.
- 2) To prohibit improper control and management practices that allow chemicals to runoff into municipal separate storm sewer systems, ditches, streams and water bodies
- 3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

SECTION 2. DEFINITIONS.

For the purposes of this ordinance, the following shall mean:
Authorized Enforcement Agency: employees or designees of the director of the government agency

designated to enforce this ordinance.

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of construction site chemicals directly or indirectly to municipal separate storm sewer systems, ditches, streams and waterbodies. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Construction Activity. These include construction projects resulting in land disturbance of _____ (square feet/acres) or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition involving construction of buildings, roads, highways and bridges.

Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Construction Site Chemical Management Enacting BMPs selected in a chemical spill prevention and management plan in order to minimize the introduction of chemicals into water resources.

Improper Management The use of chemicals at a construction site of _____ (square feet/acres) or larger without a chemical control and management plan, and/or failure to follow provisions set in the site management plan

Person means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner of the premises upon which an OSDS is being installed or as the owner's agent.

Pollutant. Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, nutrients, herbicides, and fertilizers; hazardous substances, petroleum products and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals, cleaning solvents, asphalt products and paints; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Drainage System. Publicly-owned facilities by which storm water is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Chemical Spill Prevention and Management Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to control and manage construction site and the actions to eliminate or reduce chemical runoff and/or discharges to municipal separate storm sewer systems, ditches, streams and water bodies to the maximum extent practicable.

SECTION 3. APPLICABILITY.

This ordinance shall apply to all construction site chemical management unless explicitly exempted by an authorized enforcement agency.

SECTION 4. RESPONSIBILITY FOR ADMINISTRATION.

The _____ [authorized enforcement agency] shall administer, implement, and enforce the provisions of this ordinance. Any powers granted or duties imposed upon the authorized enforcement agency may be delegated in writing by the Director of the authorized enforcement agency to persons or entities acting in the beneficial interest of or in the employ of the agency.

SECTION 5. ULTIMATE RESPONSIBILITY.

The standards set forth herein and promulgated pursuant to this ordinance are minimum standards; therefore this ordinance does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

SECTION 6. CHEMICAL SPILL PREVENTION AND MANAGEMENT PLAN

- 1) All construction sites of _____ size or greater must develop a Chemical Spill Prevention and Management Plan to be kept on site during all construction activities. Practices designed for the particular site should be developed according to Section 7 of this ordinance.
- 2) Copies of the Chemical Spill Prevention and Management Plan will be required to be filed with and approved by the [authorized enforcement agency] before any parish permits, licenses or approval for commencement of construction may be granted.
3. A person(s) must be designated as responsible for implementation of the particular site plan once approved.
- 4) Failure to follow the Chemical Spill Prevention and Management Plan or keep the plan on site will be a violation of this ordinance

SECTION 7. MANAGEMENT MEASURES TO CONSIDER IN CHEMICAL SPILL PREVENTION AND MANAGEMENT PLAN

A chemical spill prevention and management plan should be developed by contractors, governmental departments and commercial entities that store and/or handle chemical substances during construction projects of _____ size. The guidelines below will guide the

development of chemical spill prevention and management plans.

- 1) Properly handle, apply, store and dispose of pesticides
- 2) Persons mixing and applying these chemicals should be qualified applicators and should wear suitable protective clothing, in accordance with the law
- 3) Neighboring property owners should be notified prior to spraying; after spraying, warning signs should be placed in areas sprayed or treated
- 4) Pesticides and herbicides should be used in conjunction with Integrated Pest Management
- 5) When applying herbicides and pesticides, follow all label directions and additional information provided with the product. Take care not to exceed recommended rates of application, and comply with any directions to keep product away from ditches, canals, streams, bayous and other water bodies and channels
- 6) Pesticide storage areas on construction sites should be protected from the elements. Storage practices include:
 - setting aside a storage area that is locked, cool, dry and lined with plastic sheeting
 - maintaining a list of products in storage
 - tightly close lids
 - checking containers periodically for leaks or deterioration
- 7) Disposal of excess pesticides and pesticide-related wastes should conform to registered label directions
- 8) Pesticides should be disposed of through either a licensed waste management firm or a treatment, storage and disposal (TSD) facility
- 9) Containers should be triple-rinsed before disposal, and rinse waters should be reused as product
- 10) Properly store, handle, use and dispose of petroleum products following subguidelines such as:
 - line the storage area with a double layer of plastic sheeting or similar material;
 - create an impervious berm around the perimeter with a capacity 110 percent greater than that of the largest container;
 - clearly label all products
 - keep tanks off the ground; and
 - keep lids securely fastened.
 - Oily wastes such as crankcase oil, cans, rags and paper dropped into oils and lubricants, should be disposed of in proper receptacles or recycled. Waste oil for recycling should not be mixed with degreasers, solvents, antifreeze or brake fluid.
- 11) To the maximum extent practicable, keep fuel and vehicle maintenance stations away from all ditches, canals and other drainage courses and design these stations to confine runoff
- 12) Provide sanitary facilities for construction workers

13) Store, cover and isolate from drainage courses all construction materials including fill dirt and all chemicals to keep these materials from washing into the water

14) Spill control components should include measures for: immediately stopping the source of the spill, containing any liquid, and covering the spill with absorbent material such as sawdust, kitty litter or kenaf absorbent (but do not use straw). Properly dispose of the used absorbent and contaminated material

15) Have persons trained in spill handling on site or on call at all times; post spill procedure information on site; and keep materials for cleaning up spills on site and easily available

16) Wash, clean or maintain equipment and machinery in confined areas specifically designed to control runoff

17) Thinners or solvents should not be discharged into sanitary or storm sewer systems when cleaning machinery

18) Use alternative methods for cleaning larger equipment parts, such as high-pressure, high temperature water washes or steam cleaning

19) Equipment-washing detergents can be used and wash water may be discharged into sanitary sewers if solids are removed from the solution first [if local sewer authority does not allow this, this provision should be deleted]

20) Small parts can be cleaned with degreasing solvents, which can then be reused or recycled. Do not discharge any solvents into sewers

21) Washout from concrete trucks should be disposed of into a designated area that will later be backfilled; an area where the concrete wash can harden, can be broken up, and then can be placed in a dumpster; or a location not subject to urban runoff and more than 50 feet away from a storm drain, open ditch or surface water

22) Provide adequate disposal facilities for solid waste, including asphalt, produced during construction

23) Educate construction workers about proper materials handling and spill response procedures. Distribute or post informational material regarding chemical control

SECTION 9. MONITORING OF CONSTRUCTION SITES

1. Applicability.

This section applies to all construction sites of ____ size that will involve any sort of chemical substance.

2. Access to Facilities.

a) The _____ [authorized enforcement agency] shall be

permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance. If a construction site has security measures in force which require proper identification and clearance before entry into its premises, the site manager shall make the necessary arrangements to allow access to representatives of the authorized enforcement agency.

- b) Site Managers shall allow the _____ [authorized enforcement agency] ready access to all parts of the premises for the purposes of inspection, sampling and examination.
- c) The _____ [authorized enforcement agency] shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the authorized enforcement agency to conduct monitoring and/or sampling of the site's prevention measures.
- d) Unreasonable delays in allowing the _____ [authorized enforcement agency] access to a construction site is a violation of this ordinance. A site manager commits an offense if the person denies the authorized enforcement agency reasonable access to the construction site for the purpose of conducting any activity authorized or required by this ordinance.
- e) If the _____ [authorized enforcement agency] has been refused access to any part of the premises, and the person is able to demonstrate probable cause to believe that there may be a violation of this ordinance, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this ordinance or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the authorized enforcement agency may seek issuance of a search warrant from any court of competent jurisdiction.

SECTION 10. NOTIFICATION OF CHEMICAL SPILLS.

Notwithstanding other requirements of law, as soon as any person responsible for a chemical spill prevention and management plan has information of any known or suspected release of chemicals which are resulting or may result in chemical contamination on or off site shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event that such a release is a hazardous material said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the authorized enforcement agency in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice _____ addressed _____ and _____ mailed _____ to _____ the _____ [authorized enforcement agency] within three business days of the phone notice.

SECTION 11. ENFORCEMENT.

1. Notice of Violation.

Whenever the _____ [authorized enforcement agency] finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the authorized enforcement agency may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- (a) That improper chemical management shall cease and desist;
- (b) The abatement or remediation of water pollution or contamination hazards and the restoration of any affected property; and
- (c) Payment of a fine to cover administrative and remediation costs; and
- (d) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

SECTION 14. APPEAL OF NOTICE OF VIOLATION

Any person receiving a Notice of Violation may appeal the determination of the authorized enforcement agency. The appeal will be made to _____ (designated government authority). The notice of appeal must be received within __ days from the date of the Notice of Violation. Hearing on the appeal before the _____ (designated government authority or their designee) shall take place within 15 days from the date of receipt of the notice of appeal. The decision of the _____ (designated government authority or their designee) shall be final.

SECTION 15. ENFORCEMENT MEASURES AFTER APPEAL

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within __ days of the decision of the _____ (designated government authority) upholding the decision of the authorized enforcement agency, then representatives of the authorized enforcement agency shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

SECTION 16. COST OF ABATEMENT OF THE VIOLATION

Within __ days after abatement of the violation by _____ (designated government

authority) , the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within _ days. If the amount due is not paid within a timely manner as determined by the decision of the _____ (designated government authority) or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment.

SECTION 17. INJUNCTIVE RELIEF

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this Ordinance. If a person has violated or continues to violate the provisions of this ordinance, the _____ (authorized enforcement agency) may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

SECTION 18. COMPENSATORY ACTION

In lieu of enforcement proceedings, penalties and remedies authorized by this Ordinance, the authorized enforcement agency may impose upon a violator alternative compensatory actions (to be determined by the enforcement authority), such, attendance at compliance workshops, creek cleanup, etc.

SECTION 19. CRIMINAL PROSECUTION

Any person that has violated or continues to violate this ordinance shall be open to criminal prosecution to the fullest extent of the law, and shall be subject to a criminal penalty of _____ dollars per violation per day and/or imprisonment for a period of time not to exceed ____ days.

The authorized enforcement agency may recover all attorney's fees court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

SECTION 20. REMEDIES NOT EXCLUSIVE

The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

SECTION 21. SEVERABILITY.

The provisions of this ordinance are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

SECTION 22. ADOPTION OF ORDINANCE

This ordinance shall be in full force and effect __ days after its final passage and adoption. All prior ordinances and parts of ordinances in conflict with this ordinance are hereby repealed.

PASSED AND ADOPTED this ____ day of _____, 20__, by the following vote: